

Ex A to Decl of McCallion

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
DOCKET NO. 07 CIV 4530 (LTS) (THK)

AEDES DE VENUSTAS, INC.,

Plaintiff,

vs.

CONFIDENTIAL
DEPOSITION OF:

SAM GHUSSON

VENUSTAS INTERNATIONAL, LLC,

Defendants.

TRANSCRIPT of the stenographic notes of
the proceedings, taken in the above-entitled matter, by and
before SHAUNNA H. MORAN, a Certified Shorthand Reporter,
License No. X100213700, Registered Professional Reporter,
and Notary Public of the State of New Jersey, held at the
offices of MATHEWS, SHEPHERD, MCKAY & BRUNEAU, P.A., 29
Thanet Road, Princeton, New Jersey, on Tuesday, June 12,
2007, commencing at 10:10 a.m.

<p>1 understand that?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. If at any time you don't</p> <p>4 understand the question that I ask you just let me</p> <p>5 know, I'll be happy to rephrase it.</p> <p>6 A. No problem.</p> <p>7 Q. Okay. And if you need to take a</p> <p>8 break at any time, again, let me know, I'd be happy</p> <p>9 to accommodate. As long as there's no question</p> <p>10 pending at the time.</p> <p>11 A. No problem.</p> <p>12 Q. Okay. By whom are you employed?</p> <p>13 A. By myself.</p> <p>14 Q. Okay. And are you affiliated with</p> <p>15 the defendant in this case in any way?</p> <p>16 A. I'm the president and CEO.</p> <p>17 Q. Okay. Of the Venustas International,</p> <p>18 LLC?</p> <p>19 A. Correct.</p> <p>20 Q. And is Venustas International, LLC</p> <p>21 engaged in the business -- I'm sorry, the beauty</p> <p>22 industry?</p> <p>23 A. Yes, we are.</p> <p>24 Q. Okay. How long have you personally</p> <p>25 been engaged in the beauty industry?</p>	<p>1 an executive position?</p> <p>2 A. At Calvin Klein, Elizabeth Arden,</p> <p>3 Griffin and Victoria Secret Beauty, the last four.</p> <p>4 Q. Okay. Was Griffin a privately held</p> <p>5 or publicly held company?</p> <p>6 A. It was owned by the Limited.</p> <p>7 Q. Okay. During your career in the</p> <p>8 beauty industry did you have occasion to deal with</p> <p>9 trademark issues?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Would it be fair to say that</p> <p>12 trademark issues are a big part of the beauty</p> <p>13 industry?</p> <p>14 A. I would say it is part of it.</p> <p>15 Q. It's an important -- it's an</p> <p>16 important issue, especially in product development;</p> <p>17 isn't that true?</p> <p>18 A. In product name, correct.</p> <p>19 Q. And have you had occasion personally</p> <p>20 to -- to deal with any trademark issues during the</p> <p>21 course of your career in the beauty industry?</p> <p>22 A. Not personally, but my team did.</p> <p>23 Q. Okay. And have you worked with</p> <p>24 attorneys, outside counsel or inside counsel, on</p> <p>25 trademark issues from time to time?</p>
<p>1 A. Since 1976.</p> <p>2 Q. And what was the first company that</p> <p>3 you worked for in the beauty industry?</p> <p>4 A. Estee Lauder.</p> <p>5 Q. Okay. If you could just, you know,</p> <p>6 briefly summarize for me the -- your employment</p> <p>7 history. And I'm only interested in employment</p> <p>8 relating to the beauty industry.</p> <p>9 A. No problem. I was at Estee Lauder.</p> <p>10 After Estee Lauder I went to the Mennen Company.</p> <p>11 After the Mennen Company I was employed by Calvin</p> <p>12 Klein Cosmetics, Elizabeth Arden Cosmetics, company</p> <p>13 called the Griffin Development and Victoria Secret</p> <p>14 Beauty.</p> <p>15 Q. The company that you mentioned,</p> <p>16 Griffin, what -- what type of company was that?</p> <p>17 A. Griffin was a development company,</p> <p>18 beauty, personal care product development company</p> <p>19 that developed products for Victoria Secret, Bath</p> <p>20 and Body Works and other retailers.</p> <p>21 Q. Okay. Would it be fair to say that</p> <p>22 you held an executive position at each one of those</p> <p>23 companies that you just mentioned?</p> <p>24 A. No.</p> <p>25 Q. Okay. Which companies did you hold</p>	<p>1 A. Yes.</p> <p>2 Q. Okay. Are you familiar with a</p> <p>3 publication called Women's Wear Daily?</p> <p>4 A. Yes.</p> <p>5 Q. Do you read that publication?</p> <p>6 A. Yes.</p> <p>7 Q. Do you read it with any -- any sort</p> <p>8 of regularity?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Would it be fair to say that</p> <p>11 you read it on a daily basis?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. When you read Women's Wear</p> <p>14 Daily do you read the entire issue cover to cover?</p> <p>15 A. No.</p> <p>16 Q. Okay. Can you explain. Do you have</p> <p>17 a practice of how you read that publication?</p> <p>18 A. Yes, I do. I receive it on line, I</p> <p>19 click on the retail end to see what interesting</p> <p>20 retail is going on. Then I click on the beauty</p> <p>21 section and see if anything interesting in the</p> <p>22 beauty.</p> <p>23 Q. Okay. What would -- what would, in</p> <p>24 your mind, constitute an interesting article in the</p> <p>25 beauty section?</p>

<p>10</p> <p>1 A. Somebody launching a new fragrance or 2 a new cosmetic line.</p> <p>3 Q. Okay. And the same question with 4 regard to retail, what would be an interesting 5 article in your mind?</p> <p>6 A. Any retailers that I associate with 7 that I want to read about.</p> <p>8 Q. Okay. Have you ever heard of the 9 Phee Phee Awards?</p> <p>10 A. Oh, yes.</p> <p>11 Q. Okay. And what are they?</p> <p>12 A. They are fragrance award given to 13 different categories in the fragrance industry.</p> <p>14 Q. And is there a particular industry 15 group that, you know, gives out those awards?</p> <p>16 A. The beauty industry.</p> <p>17 Q. Okay. Have you ever participated in 18 nominating a product for a Phee Phee Award?</p> <p>19 A. No.</p> <p>20 Q. Have you ever been nominated for a 21 Phee Phee Award yourself?</p> <p>22 A. When you say yourself, me or my 23 company?</p> <p>24 Q. Either one. Let's start with 25 yourself first.</p>	<p>12</p> <p>1 Q. And about six years for Victoria 2 Secret?</p> <p>3 A. Victoria Secret, give and take a few 4 months, you know.</p> <p>5 Q. Now, I think you said you're the 6 president and chief executive officer of Venustas 7 International, LLC, correct?</p> <p>8 A. Yes.</p> <p>9 Q. Who's the chairman?</p> <p>10 A. Robin Burns McNeill.</p> <p>11 Q. Have you and Ms. McNeill worked 12 together previously?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And can you explain when and where.</p> <p>15 A. Robin was my president at Calvin 16 Klein Beauty Cosmetics and she was the president at 17 Victoria Secret Beauty. So I worked for Robin in 18 both companies.</p> <p>19 Q. Okay. When -- when was the company 20 Venustas International formed?</p> <p>21 A. I don't know the exact date.</p> <p>22 Q. Can you give me an approximate date, 23 a year?</p> <p>24 A. It was in zero -- I'm not sure if it 25 was late '05 or early '06. I am not sure.</p>
<p>11</p> <p>1 A. Myself, no.</p> <p>2 Q. And your company?</p> <p>3 A. Yes.</p> <p>4 Q. Which company was that?</p> <p>5 A. Calvin Klein, Elizabeth Arden and 6 Victoria Secret Beauty.</p> <p>7 Q. And did any of those nominations 8 result in an actual award?</p> <p>9 A. Absolutely.</p> <p>10 Q. Which ones?</p> <p>11 A. All of them.</p> <p>12 Q. All of them. And what years -- can 13 you just tell me which years those awards were?</p> <p>14 A. Oh, God. You know, I -- I work for 15 Calvin Klein in 19 -- I'm sorry. I work for Calvin 16 Klein in 1984 to -- to 2004, Arden in 2005 and 17 Victoria Secret from 1998 'till 2004, roughly. So 18 during those periods multiple nomination, multiple 19 wins at Calvin Klein and Victoria Secret.</p> <p>20 Q. You just -- maybe I wrote this down. 21 You said you worked at Calvin Klein from 1984, was 22 that to 2004 or was that '94?</p> <p>23 A. Oh, no. No, '94. My mistake, '84 to 24 '94. Ten years for Calvin Klein, one year for 25 Elizabeth Arden.</p>	<p>13</p> <p>1 Q. Okay.</p> <p>2 A. I would have to look back for the 3 information date. My guess would be it could be 4 late in 2005 or early 2006 somewhere.</p> <p>5 Q. Okay. Let's mark this as Plaintiff's 6 Exhibit 1.</p> <p>7 (Document received and marked P-1 for 8 identification.)</p> <p>9 Q. Mr. Ghusson, I've just handed you a 10 document that has been marked as Plaintiff's Exhibit 11 1.</p> <p>12 MR. HEPPT: And for the record, the 13 document is a multi page document bearing bates 14 numbers VEN2 through VEN6. The first page appears 15 to be a certificate for the State of Delaware dated 16 January 25, 2007.</p> <p>17 Q. Mr. Ghusson, does this document 18 refresh your recollection as to when the company was 19 formed?</p> <p>20 A. I need to read it for a second.</p> <p>21 Q. Sure.</p> <p>22 A. Yes, this says July 2006.</p> <p>23 Q. Okay.</p> <p>24 A. As a Delaware corporation.</p> <p>25 Q. Okay.</p>

4 (Pages 10 to 13)

<p>1 A. Uh-huh.</p> <p>2 Q. Were you involved in the formation or</p> <p>3 the decision to form the defendant corporation?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And who did you work with in</p> <p>6 that regard?</p> <p>7 A. My partner and I are the founders of</p> <p>8 Venustas International.</p> <p>9 Q. And by your partner who are you</p> <p>10 referring to?</p> <p>11 A. Robin Burns.</p> <p>12 Q. Okay. Can you explain to me how the</p> <p>13 name Venustas International, LLC was selected?</p> <p>14 A. Yes.</p> <p>15 Q. And would you please do that.</p> <p>16 A. I asked my assistant at Victoria</p> <p>17 Secret Beauty prior to departing Victoria Secret</p> <p>18 Beauty to have some ideas -- if she has some ideas</p> <p>19 with a name for a company and I told her what our</p> <p>20 business was going to be, developing beauty product</p> <p>21 for retailers. And she came out -- back to me with</p> <p>22 a list of names all has the meaning of beauty in</p> <p>23 different languages.</p> <p>24 Q. What was this -- I'm sorry, I didn't</p> <p>25 mean to interrupt you.</p>	<p>14</p> <p>1 Q. And so, after she gave you the list</p> <p>2 what did you do next?</p> <p>3 A. I circled the Venustas name and I</p> <p>4 liked it. In Latin -- it's beauty in Latin. I sent</p> <p>5 the list to -- I send the name, as well as other --</p> <p>6 like Bella, which I believe it's in Italian, and</p> <p>7 Amore, and I send the names to my business partner,</p> <p>8 to Robin, and she asked me to give her an</p> <p>9 explanation of the names. I forwarded the</p> <p>10 explanation of the name Venustas to mean beauty,</p> <p>11 elegance, loveliness as was defined by Mina from her</p> <p>12 dictionary, wherever she found it, and Robin waited</p> <p>13 for a while and wanted to entertain additional names</p> <p>14 in addition to this. We -- and then we decided</p> <p>15 finally to go for it.</p> <p>16 Q. Okay. When did this all take place?</p> <p>17 A. I'm going to say before we formed the</p> <p>18 company. It's got to be either some time in early</p> <p>19 Spring of 2006.</p> <p>20 Q. Okay.</p> <p>21 A. That's my guess. I'm not sure of the</p> <p>22 exact timing.</p> <p>23 Q. And correct me if I heard you wrong,</p> <p>24 but I thought you told me a minute ago that Robin</p> <p>25 had asked to come up with additional names in</p>
<p>15</p> <p>1 A. Please.</p> <p>2 Q. What was the assistant's name?</p> <p>3 A. Mina, M-I-N-A, Coccia, C-O-C-C-I-A.</p> <p>4 Q. Is she still working at Victoria</p> <p>5 Secret Beauty, to your knowledge?</p> <p>6 A. Yes, sir. Let me just -- she might</p> <p>7 be working another division, but owned by the same</p> <p>8 parent company.</p> <p>9 Q. Okay.</p> <p>10 A. She still have her job.</p> <p>11 Q. And Victoria Secret is owned?</p> <p>12 A. By the Limited.</p> <p>13 Q. Now, you said that she came back to</p> <p>14 you with a list of names, all of which had the word</p> <p>15 beauty in various languages.</p> <p>16 A. Correct.</p> <p>17 Q. How many names were on that list?</p> <p>18 A. I'm going to say, just roughly</p> <p>19 estimating, probably eight names.</p> <p>20 Q. Do you remember what those names</p> <p>21 were?</p> <p>22 A. No.</p> <p>23 Q. Do you have a copy of that list</p> <p>24 anywhere?</p> <p>25 A. No.</p>	<p>16</p> <p>1 addition to the eight that were on the list?</p> <p>2 A. Yes.</p> <p>3 Q. And do you remember whether there</p> <p>4 were additional names that were proposed?</p> <p>5 A. Yes.</p> <p>6 Q. And how many additional names were</p> <p>7 proposed?</p> <p>8 A. A few. I can't recall the number.</p> <p>9 Q. Who proposed them?</p> <p>10 A. She proposed some and I proposed</p> <p>11 some.</p> <p>12 Q. Okay. Do you remember what those</p> <p>13 additional names were?</p> <p>14 A. One was -- The Pulse was proposed by</p> <p>15 her, and I believe I proposed Opus.</p> <p>16 Q. O-P-U-S?</p> <p>17 A. Yeah.</p> <p>18 Q. Off the record.</p> <p>19 (Discussion held off the record.)</p> <p>20 Q. Back on the record. Eventually</p> <p>21 Venustas International obviously was selected?</p> <p>22 A. Correct.</p> <p>23 Q. And it was a joint decision between</p> <p>24 yourself and Ms. McNeill?</p> <p>25 A. Correct.</p>

5 (Pages 14 to 17)

<p style="text-align: right;">18</p> <p>1 Q. What did you do next in terms of the</p> <p>2 naming the company?</p> <p>3 A. We asked our lawyer to clear the</p> <p>4 name.</p> <p>5 Q. What do you mean by clear the name?</p> <p>6 A. Let me know if I could have it.</p> <p>7 That's --</p> <p>8 Q. And do you have any understanding of</p> <p>9 what's involved in that process of clearing a name?</p> <p>10 A. Yes.</p> <p>11 Q. Can you explain that to me.</p> <p>12 A. Clear, make sure that no one has the</p> <p>13 name as their companies and that it's clear from a</p> <p>14 trademark.</p> <p>15 Q. Do you remember the name of the</p> <p>16 lawyer that you asked to do that?</p> <p>17 A. Yes.</p> <p>18 Q. What was that?</p> <p>19 A. Allen Silk. It's A-L-L-E-N, Allen,</p> <p>20 Silk, S-I-L-K.</p> <p>21 Q. Which firm is he with?</p> <p>22 A. Stark and Stark.</p> <p>23 Q. Had you used Mr. Silk previously to</p> <p>24 this request as an attorney?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">20</p> <p>1 Q. He did not clear the name The Pulse?</p> <p>2 A. He did not. He said, that can be a</p> <p>3 problem. You might have issues with that and</p> <p>4 basically we said, we don't want any issues. We</p> <p>5 walk away from it and we went to the second choice,</p> <p>6 Venustas.</p> <p>7 Q. So, Pulse was the first choice?</p> <p>8 A. My partner's first choice, and I</p> <p>9 relinquish to her, she's the creative mind.</p> <p>10 Q. What was the nature of the problem,</p> <p>11 did he elaborate?</p> <p>12 A. Just he said that other people -- The</p> <p>13 Pulse could be -- could create problem for you. I</p> <p>14 said, I'm not interested if it creates problem.</p> <p>15 Q. You didn't ask him what kind of</p> <p>16 problem there was?</p> <p>17 A. No.</p> <p>18 Q. And do you remember the time frame in</p> <p>19 which this happened with Mr. Silk, the clearing the</p> <p>20 name?</p> <p>21 A. Early Spring of 2006 I believe,</p> <p>22 somewhere around there.</p> <p>23 Q. Okay. So let me make sure I</p> <p>24 understand the chronology. You asked Mr. Silk to</p> <p>25 clear the name The Pulse, correct?</p>
<p style="text-align: right;">19</p> <p>1 Q. Okay. And was it personally or in</p> <p>2 connection with business?</p> <p>3 A. Business.</p> <p>4 Q. Okay. How many -- how long had you</p> <p>5 been using Mr. Silk as an attorney?</p> <p>6 A. I believe we'd retained him as of</p> <p>7 November or -- November maybe or October of 2005.</p> <p>8 Q. Does Mr. Silk have any particular</p> <p>9 area of the law that he focuses on?</p> <p>10 A. Not familiar with that.</p> <p>11 Q. Okay. And is the firm Stark and</p> <p>12 Stark a reputable firm in your mind?</p> <p>13 A. Absolutely.</p> <p>14 Q. Mr. Silk a competent attorney in your</p> <p>15 mind?</p> <p>16 A. Absolutely. I use the firm for my</p> <p>17 personal --</p> <p>18 Q. So you have -- you have a great deal</p> <p>19 of trust in the firm?</p> <p>20 A. Absolutely.</p> <p>21 Q. Okay.</p> <p>22 A. He -- I just want to add one thing.</p> <p>23 Q. Sure.</p> <p>24 A. He basically did not clear the name</p> <p>25 Pulse for us, The Pulse.</p>	<p style="text-align: right;">21</p> <p>1 A. Correct.</p> <p>2 Q. He came back and said there could be</p> <p>3 a problem and you said forget it, correct?</p> <p>4 A. Correct.</p> <p>5 Q. Then you asked him to clear the name</p> <p>6 Venustas International?</p> <p>7 A. You got it.</p> <p>8 Q. Okay. Let's mark this as Plaintiff's</p> <p>9 Exhibit number two.</p> <p>10 (Document received and marked P-2 for</p> <p>11 identification.)</p> <p>12 Q. Mr. Ghusson, I'm handing you a</p> <p>13 document that we've had marked as Plaintiff's</p> <p>14 Exhibit number two. Can you identify this document</p> <p>15 for us?</p> <p>16 A. Yeah. This is an invoice from Stark</p> <p>17 and Stark in association with the formation of the</p> <p>18 LLC and clearing the corporate and trademark name</p> <p>19 for my company.</p> <p>20 Q. It doesn't identify the name of the</p> <p>21 company on the invoice, but do you recall what the</p> <p>22 name of the company was that was involved?</p> <p>23 A. Venustas International.</p> <p>24 Q. Okay. And the document bears the</p> <p>25 bates VEN120; is that correct?</p>

6 (Pages 18 to 21)

<p>22</p> <p>1 A. Excuse me?</p> <p>2 Q. For the record, I'll just say --</p> <p>3 A. VEN120, yes.</p> <p>4 Q. That's the bates number?</p> <p>5 A. Correct.</p> <p>6 Q. Is that the number that --</p> <p>7 MR. HEPPT: Can we stipulate that</p> <p>8 that's the number that the Defendant has affixed to</p> <p>9 its document production?</p> <p>10 MR. SHEPHERD: Yeah.</p> <p>11 MR. HEPPT: Okay.</p> <p>12 Q. Now, can you describe for me the</p> <p>13 business -- the nature of the business of Venustas</p> <p>14 International, LLC?</p> <p>15 A. Yes.</p> <p>16 Q. Sure.</p> <p>17 A. We are a development company.</p> <p>18 Q. Uh-huh.</p> <p>19 A. Development creative company. We</p> <p>20 develop beauty, personal care, home care and edible</p> <p>21 product to specialty retailers to sell under their</p> <p>22 own trademark and in their own stores to their own</p> <p>23 customers.</p> <p>24 Q. When you say develop these various</p> <p>25 products, what exactly do you mean by that?</p>	<p>24</p> <p>1 Q. When you say they give a profile to</p> <p>2 the fragrance house, what do you mean by the</p> <p>3 profile?</p> <p>4 A. It's what we're trying to accomplish.</p> <p>5 This is, you know, sophisticated customer. You</p> <p>6 know, you describe the fragrance. What are you</p> <p>7 trying to -- you know, the positioning. The</p> <p>8 positioning of the fragrance.</p> <p>9 Q. The target, the person who the</p> <p>10 fragrance will be targeted at?</p> <p>11 A. It's the customer that you'll be</p> <p>12 targeted at, yes.</p> <p>13 Q. And do they describe the types of</p> <p>14 scents that will be involved in the fragrance?</p> <p>15 A. I don't know.</p> <p>16 Q. Okay. What do you mean by edible</p> <p>17 products? You mentioned edible products.</p> <p>18 A. We make mints.</p> <p>19 Q. Okay. Are they scented mints?</p> <p>20 A. No, flavored mints.</p> <p>21 Q. Would you consider the mints to be a</p> <p>22 beauty product?</p> <p>23 A. It's an accessory to the beauty.</p> <p>24 Q. Okay. Not a beauty product itself?</p> <p>25 A. No.</p>
<p>23</p> <p>1 A. We come up with the assortment, the</p> <p>2 naming, we select the fragrance, we select the</p> <p>3 formulation of the product, we source the</p> <p>4 componentry, we retain designers to design the</p> <p>5 package, we procure the componentry, we manufacture</p> <p>6 it and we ship it to our customers in their own</p> <p>7 trademark with their own name.</p> <p>8 Q. Okay. So the product that you</p> <p>9 develop is under the trademark that the client owns?</p> <p>10 A. Correct.</p> <p>11 Q. Okay. Now, selecting the fragrance,</p> <p>12 do you have people that are employed by your company</p> <p>13 who are trained in fragrance development or</p> <p>14 perfumers, for example?</p> <p>15 A. Fragrance evaluation.</p> <p>16 Q. What is involved within fragrance</p> <p>17 evaluation?</p> <p>18 A. They basically give a profile to a</p> <p>19 fragrance house of what we're looking for, what kind</p> <p>20 of fragrance we're looking for. Fragrance house</p> <p>21 comes back with submissions. Our people will smell</p> <p>22 them and they'll give feedback to the fragrance</p> <p>23 houses if there is any modifications need to be</p> <p>24 done, top note, middle note, bottom note, I'm not a</p> <p>25 perfumist and that's not my specialty.</p>	<p>25</p> <p>1 Q. Let's have this document marked as</p> <p>2 Plaintiff's Exhibit Three.</p> <p>3 (Document received and marked P-3 for</p> <p>4 identification.)</p> <p>5 Q. Mr. Ghussan, I've handed you what's</p> <p>6 been marked as Plaintiff's Exhibit Three. Can you</p> <p>7 identify -- it's -- first of all, for the record</p> <p>8 it's a three page document bearing the bates numbers</p> <p>9 VEN11 through VEN13. And can you describe to me</p> <p>10 what those documents are?</p> <p>11 A. This is a website for Venustas</p> <p>12 International, LLC in development of -- have not yet</p> <p>13 been published. Have not yet been approved yet by</p> <p>14 my business partner --</p> <p>15 Q. Okay.</p> <p>16 A. -- Robin Burns.</p> <p>17 Q. The first page would be the home</p> <p>18 page; is that correct?</p> <p>19 A. Yes. Appears to be, correct.</p> <p>20 Q. And the second page of the exhibit</p> <p>21 is -- can you tell us what that would be?</p> <p>22 A. That would be a description of what</p> <p>23 we do.</p> <p>24 Q. We being?</p> <p>25 A. Why do we exist.</p>

7 (Pages 22 to 25)

<p>1 this challenge." Did I read that correctly? 2 A. Read it correctly. 3 Q. And would it be fair to say the 4 Venustas International is targeting fashion 5 specialty -- specialty retailers who want to get 6 into the beauty -- 7 A. Correct. 8 Q. -- business? 9 A. Correct. 10 Q. Okay. And the list of companies as 11 examples that you gave to me a minute ago of 12 specialty retailers -- vertical specialty retailers, 13 all those companies are fashion specialty retailers, 14 correct? 15 A. Correct. 16 Q. All right. 17 A. Correct in my definition. 18 Q. Right. Okay. 19 (Discussion held off the record.) 20 Q. Let's go back on the record. Are you 21 familiar with the article that appeared in Women's 22 Wear Daily on March 16th of this year that related 23 to your company? 24 A. Yes. 25 Q. Okay. Were you interviewed as part</p>	<p>30 1 formed between your company and Ann Taylor. It also 2 mentions a second client of your company, do you 3 remember that? 4 A. Yes, I remember that. 5 Q. Do you know who the client is that 6 was referred to? 7 MR. SHEPHERD: This part of the 8 record now goes confidential, attorneys eyes only. 9 MR. HEPPT: Fine. 10 A. Yes, Abercrombie & Fitch. 11 Q. Okay. Do you have a similar 12 arrangement with Abercrombie & Fitch as you have 13 with Ann Taylor? 14 A. Yes. 15 MR. HEPPT: Let's have this document 16 marked as Plaintiff's Exhibit Four. You might as 17 well stay on the special designation of this 18 transcript. 19 (Document received and marked P-4 for 20 identification.) 21 Q. Now, Mr. Ghusson, I've just handed 22 you what's been marked as Plaintiff's Exhibit Four 23 for Identification. Can you tell us what that 24 document is? 25 A. That is a vendor agreement between</p>
<p>31 1 of that article? 2 A. No. 3 Q. Was Ms. McNeill interviewed? 4 A. Yes, she was. 5 Q. Okay. And do you know what the -- 6 what the thrust of the article was? 7 A. Yes. 8 Q. And what was it? 9 A. That Ann Taylor tabbed Robin Burns to 10 develop their business. 11 Q. Okay. And in fact, it was Ms. Burns 12 and Venustas International, her company, correct? 13 A. Correct. 14 Q. Okay. Were you -- you or Ms. 15 Burns -- is it Ms. Burns or Ms. McNeill? I'm 16 getting confused. 17 A. You can refer to her as Ms. Burns. 18 Q. Okay. When we say Ms. Burns you'll 19 know we're talking about Robin Burns McNeill? 20 A. Correct. 21 Q. Do you know whether Ms. Burns was 22 given a copy of the article before it was published? 23 A. I'm not aware of that. 24 Q. Okay. In the article -- and it 25 refers obviously to the relationship that had been</p>	<p>32 1 Venustas International and Ann Taylor. 2 Q. I blanked out for a second when you 3 said that. What kind of agreement is it? 4 A. A vendor agreement. 5 Q. Vendor agreement, okay. Is this the 6 agreement that was the subject of the Women's Wear 7 Daily article on March 16th? 8 A. Yes. 9 Q. Okay. Can you tell me who first 10 initiated contact that lead to this -- this 11 agreement? 12 A. A person by the name of George Leeds. 13 Q. And who is Mr. Leeds? 14 A. He's the editor of Beauty Fashion or, 15 I'm sorry, Cosmetic World. 16 Q. What -- can you describe the role 17 that Mr. Leeds played in making -- 18 A. Yeah. Mr. Leeds contacted Robin 19 Burns and asked her if she would like to meet with 20 the chairman of Ann Taylor to discuss an opportunity 21 of developing a product for her. 22 Q. Would that be Ms. Kay Krill? 23 A. Correct. 24 Q. Did Mr. Leeds explain why he was 25 making this -- this phone call to Ms. Burns, other</p>

<p>34</p> <p>1 than -- other than to make -- you know, to see if 2 she was interested?</p> <p>3 A. Because Ms. Krill was in discussion 4 with other people to do it for her and George Leeds 5 felt that Robin would be the best choice and asked 6 Ms. Krill to hold off on any decisions until she 7 meets with Robin.</p> <p>8 Q. Okay. And Mr. Leeds and Ms. Burns 9 have a prior working relationship?</p> <p>10 A. I don't -- I don't define it as a 11 work relationship. I define it that he's an editor 12 of Cosmetic World Magazine so he knows Robin and 13 everybody in the beauty industry I'm assuming.</p> <p>14 Q. Okay. What happened after Mr. Leeds 15 called Ms. Burns?</p> <p>16 A. We set up a meeting with Ms. Krill 17 and her team, Robin and I and George Leeds, and we 18 met with them to present the concept ourselves and 19 what we could do for them in the beauty business.</p> <p>20 Q. Okay. Was Mr. Leeds paid any kind of 21 finders fee?</p> <p>22 A. Yes.</p> <p>23 Q. Was it a flat fee or a percentage?</p> <p>24 A. No, just -- just a check.</p> <p>25 Q. Okay. And you participated in that</p>	<p>36</p> <p>1 Q. Was it a slide show presentation?</p> <p>2 A. It was, but we didn't present it on a 3 slide. We just handed out --</p> <p>4 MR. SHEPHERD: It was produced.</p> <p>5 MR. HEPPT: I have it. I have it, 6 yeah.</p> <p>7 MR. SHEPHERD: Okay.</p> <p>8 (Document received and marked P-5 for 9 identification.)</p> <p>10 Q. Mr. Ghussan, I've handed you what's 11 been marked as Plaintiff's Exhibit Five for 12 Identification. Can you tell us what this document 13 is?</p> <p>14 A. This is the presentation that we made 15 during our meeting with Ann Taylor -- our first 16 meeting with Ann Taylor.</p> <p>17 Q. Okay. Let me ask you if you look 18 at -- turn the document sideways -- first of all, 19 for the record, the document -- the exhibit bears 20 the bates numbers VEN38 through VEN60. And you'll 21 notice it says on the bottom, "highly confidential, 22 attorneys eyes only." Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Who designated this document as 25 highly confidential, attorneys eyes only?</p>
<p>35</p> <p>1 meeting, correct?</p> <p>2 A. Absolutely.</p> <p>3 Q. Okay. When did that meeting take 4 place?</p> <p>5 A. Oh, God, late 2006. I'm not sure 6 exactly as of when. It could be November 2006.</p> <p>7 Q. Prior to the meeting did you send any 8 documentation over to Ms. Krill or any member of her 9 team?</p> <p>10 A. I don't recall.</p> <p>11 Q. Okay. Did you provide any 12 information regarding the company, Venustas 13 International, prior to meeting with her?</p> <p>14 A. I don't recall.</p> <p>15 Q. Did the company produce any type of 16 promotional material that would be used in 17 soliciting new business?</p> <p>18 A. No.</p> <p>19 Q. Did the company produce any material 20 that would be used in connection with the meeting 21 that you had with Ms. Krill and her team?</p> <p>22 A. Yes.</p> <p>23 Q. Do you remember what that material 24 was?</p> <p>25 A. A presentation.</p>	<p>37</p> <p>1 A. I did.</p> <p>2 Q. Okay. Did you have discussions with 3 anyone regarding the designation of this document as 4 highly confidential, attorneys eyes only?</p> <p>5 A. My attorney.</p> <p>6 Q. Okay. Other than your attorney did 7 you discuss that designation with anyone else?</p> <p>8 A. No, sir.</p> <p>9 Q. Okay. Now, the title on the first 10 page is "Venustas International and Ann Taylor, how 11 we might work together." And then there's a date of 12 8th, November 2006. Do you see that?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Okay. Is that the date of the first 15 meeting?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. Did you draft this document?</p> <p>18 A. Not me, no.</p> <p>19 Q. Did you play any role in drafting 20 this document?</p> <p>21 A. Yes.</p> <p>22 Q. What role did you play in it?</p> <p>23 A. Robin and I worked with a consultant 24 to draft this document.</p> <p>25 Q. Which consultant?</p>

10 (Pages 34 to 37)

<p style="text-align: right;">42</p> <p>1 way, on the bottom of each of these pages that we've 2 talked about, in addition to the highly 3 confidential, attorneys eyes only designation that 4 we discussed there's another designation which reads 5 "confidential, do not distribute." Do you see that? 6 A. Correct. 7 Q. When was that put on? 8 A. That was put on when we presented it 9 to Ann Taylor. 10 Q. Okay. On page five these are the 11 bios that we talked about earlier, correct? 12 A. Uh-huh. Correct. 13 Q. Were there any other members of your 14 team besides yourself and Ms. Burns that attended 15 the meeting on November 8th? 16 A. No. 17 Q. Okay. Okay. The next page, page 18 six. Can you describe what this information is? 19 A. It's our core competency, what we 20 offer them. It says: "We develop the most creative 21 and innovative products, packaging and gift items. 22 We deliver the highest quality. We provide 23 outstanding service. We provide very competitive 24 pricing because we have great relationship with our 25 suppliers. Speed-to-market know how to get it done</p>	<p style="text-align: right;">44</p> <p>1 Q. Okay. Without reading it, can you 2 just describe what the information contained on this 3 page is. 4 A. Well, what the interesting -- the 5 thing on this is basically to explain to the 6 retailers that they can leverage their brand equity 7 by launching an assortment of products. Not only 8 stick to the fashion by selling sweaters or dresses 9 and so on, that they can enter into the beauty 10 category and use their brand in multiple categories 11 to sell a product. 12 Q. And so it would be the Ann Taylor 13 brand that would be placed on new beauty products 14 that you developed for them? 15 A. Absolutely. 16 Q. Okay. 17 A. Or a brand that they -- they select 18 within Ann Taylor. I should say, the Ann Taylor 19 brand, but they could have a different name 20 underneath it. 21 Q. Okay. 22 A. A trademark for a fragrance that -- 23 they pick a name. 24 Q. Okay. 25 A. It's not us.</p>
<p style="text-align: right;">43</p> <p>1 and get it done quick. Deliver all products on time 2 and on budget." And we "react with agility to the 3 business." 4 Q. Basically, this is trying to convince 5 them that your company is best suited to win this 6 contract, correct? 7 A. Well, I wouldn't call it a contract. 8 I would call it, try to convince them they -- we 9 tried to explain to them who we are and how we do 10 it. 11 Q. Okay. Was there -- was there a 12 contract that was going to be awarded -- what was 13 the purpose of this meeting? 14 A. The purpose of this meeting is if 15 they selected us then we would go into a vendor 16 agreement where we would develop this for them and 17 provide -- 18 Q. And if they selected another company 19 they would enter into an agreement with another 20 company? 21 A. I don't know what they would do. 22 Q. Okay. Now, the next page is headed 23 "The Beauty Industry Today: Succeeding as a 24 Vertical Specialty Retailer." 25 A. Uh-huh.</p>	<p style="text-align: right;">45</p> <p>1 Q. Was there any discussion regarding, 2 you know, your company selecting names for the 3 products that were developed? 4 A. Not in this meeting, no. 5 Q. Okay. 6 A. This meeting was presenting to them 7 what we can do for them. 8 Q. This was a, hi, how are you? Nice to 9 meet you kind of meeting? 10 A. Yeah. 11 Q. Okay. 12 A. And try -- not just hi, how are you, 13 try to explain to them the beauty category. And, as 14 you can see, there is many pages of financial 15 numbers trying to explain to them what the category 16 can mean to them. 17 Q. Okay. And in fact, that's basically 18 the balance of this document -- 19 A. Uh-huh. 20 Q. -- is explaining the beauty industry, 21 the growth rates, so forth and so on, correct? 22 A. Correct. 23 Q. What does it mean when it refers -- 24 the document refers to channel dynamics? 25 Specifically I'm looking at page twelve of the</p>

12 (Pages 42 to 45)